

(1982) 06 GUJ CK 0008
In the Gujarat High Court
Case No : Spl. Civil Application No. 3649 of 1981

J.D. Pathak

APPELLANT

Vs

V.B. Barot and Another

RESPONDENT

Date of Decision : 16-06-1982

Acts Referred:

Registration Act, 1908 — Section 20(1), 71(2)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 26, 28

Citation : AIR 1982 Guj 317 : (1982) GLH 797 : (1982) 2 GLR 633

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Advocate : S.M. Shah, for the Appellant; V.H. Bhairaviya, for Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

1. This petition under Art. 226 of the Constitution of India raises a short but an interesting question of law as to the power of the Sub-Registrar acting under the provisions of the Indian Registration Act, 1908 (hereinafter referred to as "the Registration Act") to refuse to accept for registration a document which, according to the Sub-Registrar, is governed by the provisions of Ss. 26 and 28 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Land Ceiling Act").

2. A few relevant facts may be noted at this stage. It is the case of the petitioner that he is not holding any land more than the ceiling area and he decided to sell his land admeasuring 568.8 sq. yds. located at Rajkot to one Kusumben Amratlal Bhatt and executed the sale deed on 27-7-1981 in her favour for a consideration of Rs. 1,000/-. The said document was presented by the petitioner in the office of the Joint Sub Registrar, Rajkot, respondent No. 2 who is charged with statutory duty of registration, of documents under the provisions of the Registration Act. The said document was first accepted for registration by respondent No. 2 on its production on 27-7-1981 and was given serial number 6128. But thereafter, the second respondent returned the said sale deed to the

petitioner with a letter dated 27-7-1981 addressed to the petitioner stating that as per the provisions of the Transfer of Property Act, the transfer takes effect from the date of execution of the document and, therefore, the sale deed which the petitioner has produced can be presented for registration only after giving notice under S. 26 of the Land Ceiling Act in view of the written instructions issued by the first respondent-District Registrar of documents, Rajkot. Accordingly, the second respondent directed the petitioner to present the document of sale for registration after obtaining receipt of the notice which he will have to give under S. 26 of the Land Ceiling Act. The written instructions issued by the first respondent to all the parties presenting documents for registration in the offices of the Sub-Registrars as well as to the document writers and on the basis of which the second respondent has acted, are produced on the record of the case at Annexure "B"; while the order of the second respondent refusing to accept the petitioner's sale deed for registration is at Annexure C to the petition.

3. The petitioner contends that the written instructions of the first respondent at Annexure "13" as well as the impugned order of the third respondent at Annexure , V involve patent errors of law and jurisdiction and they are totally ultra virus the relevant provisions of the Registration Act as well as the Land Coning Act This petition having been admitted to final hearing has reached final hearing before me today.

4. Mr. S. M. Shah, learned Advocate for the petitioner submitted that under the relevant provisions of the Registration Act, there are only limited contingencies under which registration of a document can be refused by the Registrar. That only because vendor of urban property governed by the provisions of the Land Ceiling Act does not produce proof of having sent notice u/s 26(1) of the Land Ceiling Act, to the competent authority along with the document which is presented for registration, the Sub-Registrar has no jurisdiction or authority under the Registration Act to return the document to the party presenting it for registration and that the only course open to the Sub-Registrar is to defer the question of registration of the said document till such proof is furnished by the party presenting the document for registration. But in no eventuality, a document can be refused to be accepted for registration and can be returned to the concerned party presenting it for registration. That such a course which is contemplated by the impugned written instructions at Annexure "B" and the impugned order at Annexure "C" is totally dehors the provisions of the Registration Act nor is it permissible even under Sec. 28 of the Land Ceiling Act which only prohibits registering authorities from registering concerned documents in contingencies contemplated by Section 28 of the Act, but even this provision does not enable or permit the registering authority to refuse to accept a document for registration or to retain the same in his office pending further inquiry in the course of registration,

5. Mr. V. H. I3hairaviya, learned advocate appearing for the respondents on the

other hand contended that it is true that under various provisions of the Registration Act, there is no express power given to registering authority to return documents to Ole concerned party presenting it for registration in the contingencies contemplated by the impugned instructions at Annexure "B" and the impugned order at Annexure "C". But the said course is justified in the light of the letter and spirit of S. 26(1) read with Section 28 of the Land Ceiling Act, and consequently, the impugned order cannot be construed to be totally ultra vires or null and void.

6. In order to resolve this controversy between the parties, it is necessary to first look at the relevant provisions of the Registration Act. The said Act is a consolidating Act enacted with a view to consolidating the enactments relating to the registration of documents as: the preamble shows at the apex of the registration machinery as provided by the said Act, Section 3 contemplates appointment of Inspector General of Registration for the territories subject to the concerned State Government. Section 5 contemplates formation of the districts and sub-districts for the purpose of administration of registration of documents. Section 6 provides for appointments of Registrars and Sub-Registrars of several districts and several sub-districts, as formed u/s 5. Section 16 contemplates provision for the office of every registering officer and books for the purpose of the said Act. Such books have to contain forms from time to time prescribed by the Inspector General of Registration with the sanction of the State Government. All the pages of such books are to be consecutively numbered in print. Section 17 of the Registration Act enjoins compulsory registration of certain documents enumerated therein which in its turn equally enjoins the duty on the registering authority to register such documents. Section 13 talks of documents which can be voluntarily registered. Then follows Ss. 19 and 20 which may be referred to at this stage. Section 19 provides that if any document duly presented for registration be in a language which the registering officer does not understand, and which is not commonly used in the district, he shall refuse to register the document, unless it be accompanied by a true translation into a language commonly used in the district and also by a true copy. It is, therefore, obvious that the registering authority can refuse to register a document which is not intelligible to him and in such case, unless required conditions are satisfied, it would be open to the registering authority to refuse registration thereof. So far as S. 20 is concerned, it contemplates a different situation which empowers the registering officer in his discretion to refuse to accept for registration any document in which any interlineation, blank, erasure, or alteration appears, unless the person executing the document attest with their signatures or initials such interlineation, blank, erasure or alteration. Thus under S. 20(1), the registering authority has power to refuse to accept for registration such defective document. In such a case, it would be open to the registering authority to return the document to the party presenting it unless the requirements of the section are complied with. It is, therefore, obvious that the legislature is conscious of the two different contingencies. In one contingency, the legislature

has contemplated a situation in which registering officer can refuse to register while in another set of circumstances, the registering authority can remise to even accept a document for registration and can legitimately return the same to the party presenting it for registration till the requirements of the section are complied with. Section 23 is another section which deserves to be noted. It states that subject to the provisions contained in Ss. 24, 25 and 26, no document other than a Will shall be accepted for registration unless presented for that purpose to the proper officer within four months from the date of its execution. Thus, a period of limitation has been provided during which the concerned document can be presented for registration. Part VI of the Registration Act deals with the topic concerning presentation of documents for registration and the procedure to be followed hereunder. Section 32 is the first section of that part and it states that except in the cases mentioned in Sections 31, 88 and 89, every document to be registered under the Act whether such registration be compulsory or optional, shall be presented at the proper registration office by persons enumerated therein, Section 34 falls in the same part and it provides that subject to the provisions contained in that part and in Ss. 41, 43, 45, 69, 75, 77, 88 and K no document shall be registered under this Act, unless the persons executing such document or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under Ss. 23, 24, 25 and 26. Sub-section (2) thereof states that appearances under sub-section (1) may be simultaneous or at different times. Sub. section (3) of S. 34 provides that the registering officer shall thereupon-- (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed; (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and (c) in the case of any Person Appearing as a representative assign or agent, satisfy himself of the right of such person so to appear. Section 35 prescribes procedure of admission and denial of execution respectively. As per sub-section (2) of S. 35, the registering officer may, in order to satisfy himself that the persons appearing before him are the persons they represent themselves to be, or for any other purpose contemplated by this Act, examine any one present in his office. As per sub-section (3) thereof, the registering officer can refuse to register a document if it is found that the person who is alleged to have executed the document denies execution or the executant by whom the document purports to be executed is dead. As per Part VII of the Registration Act, registering officer has been empowered to enforce appearance of executants and witnesses in the inquiry held by him which he is competent to hold under the contingencies contemplated by the Act As per S. 51(1) various books are required to be maintained by the registering officers and out of four types of books, book No. 2 refers to record of reasons for refusal to register and book 4 refers to miscellaneous register. As per S. 52(1)(a), the registering authority is enjoined to endorse on every document, the day, hour and place of presentation and the signature of every person Presenting a document for registration. As per sub-section (2) thereof, a receipt for such document shall be

given by the registering Officer to the person presenting the same. Under Part 11 are found Secs. 71 onwards which deal with a situation and mode in which the Registrar can refuse to register a document. As per S. 71(1), every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his book No. 2 and endorse the words "registration refused" on the document. Sub-section (2) of S. 71 prohibits the registering officer from accepting any document so endorsed unless and until under the provisions thereafter contained, the document is directed to be registered. As per S. 72(1), except where the refusal is made on the ground of denial of execution, an appeal shall lie against an order of a Sub-Registrar refusing to admit a document to registration (whether the registration of such document is compulsory or optional) to the Registrar. So far as refusal to register a document on the ground that the purported executant denies its execution is concerned, procedure of Section 73 has been laid down where under, an application can be filed to the Registrar to whom the concerned Sub-Registrar is subordinate with a view to establishing the right to get such document registered. Under the contingencies contemplated by S. 77, even suits are contemplated against the orders of refusal of registration by the Registrar. u/s 85, it has been provided that documents (other than Wills) remaining unclaimed in any registration office for a period exceeding two years may be destroyed.

7. A resume" of the aforesaid relevant provisions of the Registration Act clearly shows that it is only under two contingencies that a registering officer is empowered to refuse to accept a document presented before him for registration and can legitimately return the same to the party presenting it for putting his house in order and the said provisions are contained in S. 20(1) whereunder the registering officer can refuse to accept for Registration defective documents and the other relevant provision is Sec. 71 (2) under which a document whose registration is refused and which bears such endorsement from competent Sub-Registrar cannot be accepted for registration once main unless the said impediment is removed after following the procedure laid down by Section 72 onwards. Save and except the above contingencies, in all other cases, the Registrar after holding inquiry which he deems proper, can either register a document or may refuse to register it in which case, the order of the registering authority can be carried higher up in the hierarchy of proceedings contemplated by the Registration Act. It is in the context of these statutory provisions of the Registration Act that the inroads made by the relevant provisions of the Land Ceiling Act will have to be appreciated.

8. The Land Ceiling Act has been enacted by the Parliament with a view to providing for the imposition of a Ceiling on vacant land in urban agglomeration, for the acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiting therein and with a view to bringing about

an equitable distribution of land in urban agglomeration to subserve the common good, as the preamble of the Act suggests. I may straight go to the relevant two sections of the Land Ceiling Act on which strong reliance was placed by Mr. Bhairaviya for the respondents to sustain the impugned orders. Section 26(1) provides thus :-

" Notwithstanding anything, contained in any other law for the time being in force, no person holding vacant land within the ceiling limit shall transfer such land by way of sale, mortgage, gift, lease or otherwise except after giving notice in writing of the intended transfer to the competent authority."

Sub-section (2) of S. 26 lays down:-

"Where a notice given under sub-section (1) is for the transfer of the land by way of sale, the competent authority shall have the first option to purchase such land or-, behalf of the State Government price calculated in accordance with the provisions of the Land Acquisition Act, 1894, or of any other corresponding law for the time being in force and if such option is not exercised within a period of sixty days from the date of receipt of the notice, it shall be presumed that the competent authority has no intention to purchase such land on behalf of the State Government and it shall be lawful for such person to transfer the land to whomsoever he may like."

The proviso to sub-section (2) reads:-

"Provided that where the competent authority exercises within the period aforesaid the option to purchase such land the execution of the sale deed shall be completed and the payment of the purchase price thereof

Shall be made within a period of three *months from the date on which such options exercised."

It is obvious that the scheme of Section 26 of the Land Ceiling Act engrafts a provision of statutory pre-emption-cum-hybrid scheme of acquisition, in favour of the competent authority and for that purpose, prospective seller of vacant land within ceiling limit as governed by the provisions of the Land Ceiling Act has to give written notice of intended transfer to the competent authority. The said provision has been made with a view to making the scheme of statutory pre-emption-cum-acquisition effective. if the competent officer exercised his discretion and chose to purchase the said land, the sale it, favour of the competent authority would prevail and the intended sale in favour of the private purchaser will fall through. In order to make the said scheme of statutory pre-emption-cum-acquisition u/s 26 more effective, simultaneously the legislature has enacted Section 28 of the Land Ceiling Act which seeks to regulate registration of documents in certain cases. Thus, in a way, it trenches upon the provisions of the Registration Act, but as the Land Ceiling Act is also a central Act, the Parliament can effectively. trench upon the impugned provisions of the Registration Act which is also enacted by the then Central legislature which was

fore-runner of the present Parliament which enacted the Land Ceiling Act. As per S. 28 of the Land Ceiling Act, it has been provided as under:-

"Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of Cls. (a) to (c) of sub-section (1) of Section 17 of the Registration Act, 1908, purports to transfer by way of sale mortgage, gift, lease or otherwise any land or any bidding (including any portion thereof-

(a) in the case of any transfer referred to in Section 26, no registering officer appointed under that Act shall register any such document unless the transferor produces before such registering officer evidence to

show that he has given notice of the intended transfer to the competent authority under that section and, where such transfer is by way of sale, the period of sixty days referred to in sub-section (2) of that section has elapsed."

It is the aforesaid provision which has been heavily relied upon by Mr. Bhairaviya on behalf of the respondents to salvage the situation for the respondents. A mere look at the aforesaid provision shows that the only mandate of the said provision is that the registering officer cannot register a document presented before him for registration unless the transferor produces before such registering officer evidence to show that he has given the notice of intended transfer to the competent authority and in case of sale, even though such evidence is produced, there is a further fetter on the power of the registering authority requiring it to wait at least for a period of 60 days from the date on which such notice has been served by the transferor to the competent authority u/s 26(1) of the Ceiling Act. The intention of the legislature underlying the said provision is obvious. If the hybrid scheme of statutory pre-emption-cum-acquisition as envisaged by Section 26 of the Land Ceiling Act is to be made effective, any likely impediment in the operation of the said scheme should be eliminated and to guard against such an impediment, Section 28 has been enacted. It is obvious that as the provisions of the Registration Act stand, moment a document falling within the four corners, Section 17(1) of the Registration Act is presented for registration before the registering authority and if there is nothing for the Registrar to doubt the genuineness of the execution of the document and if its execution is admitted, the registering authority will

duty bound to register such document. No provision of the Registration Act can permit him to refuse to register a document if the requirements of the Registration Act are satisfied. Consequently, if intended transferor of vacant land to which the provisions of the Land Ceiling Act apply enters into a registered document and presents it for execution (registration) before the Registrar, nothing in the Registration Act can prevent him from registering such document. Moment that happens, transfer of interest takes place and such transfer of interest would obviously fly in the face of the scheme of statutory pre-emption-cum-acquisition envisaged by the legislature u/s 26 of the Land Ceiling Act with

respect to such vacant land. In order to see that the scheme of statutory pre-emption-cum-acquisition is not thus frustrated, necessary safety valve had to be provided by the legislature in the form of Section 28. Therefore, a mandate has been given by the legislature to all the registering authorities not to register such documents concerning vacant land unless the prospective transferor leads evidence before the registering authorities to show that he has already complied with the statutory requirement of Section 26(1) and in case of sale of such vacant land, the competent authority has either no intention to purchase such land or is presumed to have no such intention once 60 days' period expires from the date of receipt of notice as contemplated by Section 26(1). It is only thereafter that the Registrar can proceed to register such document. This provision, therefore, clearly insulates against possible frustration of statutory pre-emption-cum-acquisition as envisaged by Section 26. It is, therefore, obvious that the prohibition enacted by Section 28 is a limited prohibition. It enjoins the competent registering authorities not to register any document covered by Section 26 unless requirements of Section 28 get complied with in a given case. It is pertinent to note that as per Section 28 of the Land Ceiling Act, the legislature has restrained the registering authorities from registering a document unless requirements of Section 28 are complied with. But the legislature has nowhere laid down u/s 28 of the Land Ceiling Act that in cases contemplated by the said section, registering officer shall refuse to accept such document for registration. It is obvious that the difference between the two types of eventualities viz. Refusing to accept for registration a document and refusing to register a document is well marked and well understood. The Registration Act itself clearly demonstrates these two types of situations as I have already detailed above. Thus, the legislature being alive to such twin types of situations, contemplated only one type of situation while it enacted Section 28 and imposed a limited restriction on the power of the registering authority and directed it to refuse to register a document covered by the net-work of Section 26 read with Section 28 of the Land Ceiling Act. But the legislature has not mandated the registering officer to straightway refuse to accept such document for registration or in other words, to return such document to the person presenting it for registration, only on the ground that the "requirements of Section 28 read with Section 26 of the Land Ceiling Act are not complied with.

9. Mr. Shah for the petitioner was justified when he contended that the limited restriction imposed by the legislature on the registering officer by enacting S. 28(a) of the Land Ceiling Act directing the concerned officer not to register a document unless requisite evidence as contemplated by the said section was produced before him, has been misinterpreted by the respondents by assuming that the prohibition engrafted by Section 28 travels further and prohibits a registering officer from even accepting a document for registration or from keeping it pending awaiting compliance with the provisions of Section 28(a) of the Land Ceiling Act. Mr. Shah was also right when he contended that if the legislature had intended that registering authorities in cases contemplated by

Section 28(2) of the Land Ceiling Act should not even accept such document for registration unless requirements of the said provisions were complied with, the legislature would have used the words "No registering officer appointed under the Act shall accept for registration any such document". But advisedly, the legislature has used a different phraseology restraining such officers from actually registering document unless requisite formalities of S. 28(a) were complied with. It is obvious that to import such words in the said provision would amount to re-writing the section which is not open either to the respondents or to the Court. On the clear language employed by the legislature while enacting S. 28(a) of the Land Ceiling Act, it must be held that the registering authorities under the Registration Act have been enjoined to follow the procedure of the said provision and not to register a document envisaged by the said section till the conditions prescribed by the section are complied with and in the meanwhile the concerned document has to be kept on the pending file awaiting further orders in respect of its registration. It is obvious that the section contemplates an inquiry before the Registrar by recording evidence before a final decision is reached by him to register such a document or not. Even in case when the evidence is tendered before the Registering officer to the effect that notice contemplated by Section 26(1) has already been given by the transferor as per the mandate of Section 28(a) of the Land Ceiling Act, the Registrar has to wait for 60 days referred to in sub-section (2) of Section 26 before registering such document. During all this time, obviously, the tendered document for registration has to remain on the pending file of the Registrar. It is, therefore, not possible to agree with the submission of Mr. Bhairaviya for the respondents that as per the language of Section 28 of the Land Ceiling Act, the only course open to the registering authority is to return the document to the concerned party till the requirements of Section 28(a) are complied with. It is also necessary to note at this stage a further contention of Mr. Shah that if the interpretation put by the respondents on Section 28(a) is accepted, in a given contingency-, an impossible situation may arise. Mr. Shah, placing reliance on S. 23 of the Registration Act, submitted that the document which is required to be registered has to be presented before proper officer within four months from the date of its execution. Only on the ground that the requirements of Section 26(1) of the Land Ceiling Act are not complied with, if the document tendered by the party for registration is returned, it is possible to a situation in which the same document may come to be re-tendered after complying with the provision of Section 26(1) after four months and lot of complications may arise in the meanwhile. Even apart from the aforesaid contingency which may in a given case arise, the interpretation put by the respondents on the language of Section 28(a) of the Land Ceiling Act is clearly unjustified and unsustainable. The said section nowhere lays down that the registering authority cannot even enter a document for registration, if it attracts provisions of S. 28(a) of the Land Ceiling Act. All that can be done by the registering officer in such a case is that such document has to be kept on the pending file and after being satisfied that notice u/s 26(1) of the Land Ceiling Act has been given by the transferor and in case of sale after waiting for a period of

60 days from the date of receipt of such notice by the competent officer, the Registrar can proceed to deal with the document for registration in accordance with law and as per the provisions of the Registration Act. This is the only embargo which gets engrafted on the powers of the registering officer under the Registration Act on account of inter-action of provisions of Sections 26 and 28 of the Land Ceiling Act with the relevant provisions of the Registration Act.

10. As a result of the aforesaid discussion, it must be held that on a misconception of law, the respondents failed to exercise jurisdiction and they were patently in error, when they took the view that the sale deed executed by the petitioner could not have been accepted for registration and was required to be returned to him for representation after complying with the provisions of Section 26(1), of the Land Ceiling Act. The impugned written instructions at Annexure "B` as well as the impugned order at Annexure "C" are, therefore, liable to be quashed and set aside. Rule issued in the petition deserves to be made absolute. Respondent No. 2 is directed to accept the document in question and to keep the concerned document of sale on his pending file awaiting due compliance with the provisions of Section 28 of the Land Ceiling Act by the petitioner and thereafter to proceed further in accordance with law. Rule is accordingly made absolute with

11. Rule made absolute.